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8 **UNITED STATES DISTRICT COURT**  
**EASTERN DISTRICT OF WASHINGTON**

9 RIVER CITY MEDIA, LLC, et al.,  
10 Plaintiffs,  
11  
12 v.  
13 KROMTECH ALLIANCE  
CORPORATION, et al.,  
14 Defendants.  
15

Case No. 2:17-cv-00105-SAB

**PLAINTIFFS' MOTION TO  
COMPEL DISCOVERY**

With Oral Argument  
Date: March 15, 2018  
Time: 2:30 p.m.  
Spokane, Washington

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## INTRODUCTION

1 Plaintiffs River City Media, LLC, Mark Ferris, Matt Ferris, and Amber Paul  
2 (“Plaintiffs”) respectfully, by their undersigned counsel of record, submit this  
3 motion, pursuant to Rule 37(a)(3)(B)(iii) and (iv) of the Federal Rules of Civil  
4 Procedure, to compel Defendant CXO Media, Inc. (“CXO”) to produce documents  
5 responsive to Plaintiffs’ First Requests for the Production of Documents and to  
6 provide complete interrogatory responses in response to Plaintiffs’ First Set of  
7 Interrogatories.

8 In denying Defendants’ motion to dismiss, the Court permitted Plaintiffs to  
9 take discovery on certain jurisdictional issues. Despite months of discussion and  
10 this Court’s entry of the protective order that CXO demanded as a prerequisite to  
11 its production, CXO *still* has not produced all responsive documents and  
12 information. At the same time, Plaintiffs have been more than cooperative -  
13 producing complete responses to several sets of discovery, and even appearing for  
14 a jurisdictional deposition.

15 CXO has refused to respond to discovery directly relevant to the question of  
16 specific personal jurisdiction—a matter about which the Court expressly permitted  
17 early discovery. CXO claims that Plaintiffs are entitled only to discovery regarding  
18 the specific article at issue in this case, but the question of jurisdiction involved  
19 *anything* CXO has done to target Washington consumers. Because of CXO’s  
20 refusal to cooperate, Plaintiffs’ can’t fully evaluate jurisdiction for purposes of  
21 their First Amended Complaint – a problem created by CXO for its benefit. CXO  
22 should not be permitted to abuse the discovery process in order to avoid the  
23 jurisdiction of this Court. For these reasons, as set forth fully below, this Court  
24 should grant Plaintiffs’ motion to compel.

25 As required by Local Rule 37.1, attorneys for Plaintiffs conferred in good  
26 faith with attorneys for CXO regarding the nature of this Motion and its legal basis.  
27 Plaintiffs have attempted in good faith to narrow the scope of the issues before this  
28

1 Court. The parties were unable to come to any agreement. Plaintiffs now seek an  
2 order requiring Defendant CXO to provide this vital information.

## 3 **FACTS**

### 4 **A. Factual Background**

5 Defendant CXO owns and operates the Internet security-focused website,  
6 CSOonline.com. (ECF. No. 1 at ¶ 4; Declaration of Edward Bloom in Support of  
7 Motion to Dismiss (“Bloom Decl.”), ECF. No. 15 at 3.) CSOonline.com is an  
8 internationally-known source of security news. The site boasts 786,000 average  
9 monthly page views from 395,000 average monthly unique visitors. (*See*  
10 Declaration of Matt Ferris in Support of Opposition to Motion to Dismiss (“Ferris  
11 Decl.”), ECF No. 25, ¶ 14, Ex. 4 (CSO Media Kit, available at  
12 <https://www.idgenterprise.com/reach/cso/>, last visited April 28, 2017).) CSOonline  
13 calls itself the “leading source” for security professionals to “connect exclusively  
14 with key security decision-makers.” (*Id.*)

15 Washington State houses substantial numbers of the country’s information  
16 security professionals, many of whom read CSOonline.com. (Declaration of  
17 Amber Paul in Support of Opposition to Motion to Dismiss (“Paul Decl.”), ECF.  
18 No. 24, ¶ 4.) It is for that reason that Washington is an important market for CXO.  
19 (Paul Decl. ¶ 4.) Indeed, River City’s business partners - many of whom reside in  
20 Washington - also read or get information from news stories published on  
21 CSOonline.com. (*Id.* at ¶ 5.) CSOonline.com has a wide reach with respect to  
22 River City’s customers and business partners in this District. (*Id.* at ¶ 6.)

23 CXO (via CSOOnline) played a pivotal role in analyzing and disseminating  
24 River City’s data following Defendant Chris Vickery’s hacking and theft of  
25 information. Based on that data, CXO then spread false, defamatory, and  
26 reputation-ruining information about River City. As just one example, it published  
27 a March 6, 2017 article by Defendant Steve Ragan entitled “Spammers expose  
28 their entire operation through bad backups,” (the “Ragan Article”). (Complaint,

ECF No. 1, at 11–13.) The Ragan Article arises from the months-long computer hacking campaign against Washington-based River City. (Complaint at ¶¶ 38–63, ECF No. 1 at 7–11.)

The record proves that CXO knew that River City operated out of Washington and that the harm would be felt here:

1. Multiple documents posted publicly by Ragan and Vickery include address information for River City and its associated business partners (Ferris Decl. ¶¶ 25, 26, 29);
2. Spamhaus listed location information for Matt Ferris, and both Vickery and Ragan referenced that fact in their articles (Ferris Decl. ¶ 31);
3. Vickery and Ragan had access to extensive IP address data, much of which pointed to Spokane, WA (Ferris Decl. ¶ 29) - for example, Ragan refers to TierPoint, an ISP, as being the only connection to the internet for Cyber World Internet Services (an entity linked to River City), both of which had Spokane IP addresses (*id.*); and
4. The actual data that Ragan helped analyze was rife with references to Washington, indicating that the data itself likely came from Washington computers. (*Id.*)

**B. Plaintiffs have diligently pursued discovery but CXO’s responses remain insufficient.**

Following Defendants’ unsuccessful Motions to Dismiss, ECF No. 60, the parties began a court-mandated discovery phase relating to whether the Eastern District of Washington can exercise jurisdiction over Defendants. Since then, Plaintiffs have diligently pursued discovery.

Plaintiffs served their first set of discovery on October 30, 2017. (Declaration of Leeor Neta in Support of Motion to Compel, dated February 9, 2018 (“Neta

Decl.”), ¶ 2, Ex. A.) The following Interrogatories and Document Requests are relevant to this Motion:

**Request for Production No. 3.** Produce all Documents related to CXO Media’s relationship with IDG, Inc.

**Request for Production No. 4.** Produce all Documents related to CXO’s advertising and marketing of CXO’s media properties in the state of Washington.

**Request for Production No. 5.** Produce all Documents related to total sales of each of CXO Media’s products or services, including subscriptions or memberships to magazines or news sites, whether print or online, in the United States generally and to Washington residents specifically.

**Request for Production No. 6.** Produce all Documents related to CXO Media’s income derived from advertising on its websites to Washington state residents.

**Interrogatory No. 3.** For each product or service described in Interrogatory No. 2, provide the following information:

- (a) The number of units sold to consumers in the United States;
- (b) The number of units sold to consumers in the state of Washington;
- (c) The methods by which You market the product or service;
- (d) The number of units sold to consumers in the United States directly from Your online store;
- (e) The number of units sold to consumers in the state of Washington directly from Your online store;
- (f) The number of units sold to consumers in the state of Washington from Your affiliates (define somewhere) (sic)

(Neta Decl. Ex. A.)

CXO served its responses to Plaintiffs’ Requests for Production and Interrogatories on November 28, 2017, objecting to Requests for Production 4, 5, and 6, and Interrogatory 3, on the ground that they were directed to general jurisdiction, rather than specific jurisdiction:

CXO objects to this Interrogatory on the ground that it is overly broad and seeks information relating to general jurisdiction even

1 though (1) the Court's Order (ECF No. 60 at 4) specifically states  
2 that "Plaintiffs are only relying on specific jurisdiction; (2) Plaintiffs'  
3 counsel expressly disclaimed general jurisdiction at the hearing on  
CXO's Motion to Dismiss; and (3) Plaintiffs do not allege General  
jurisdiction in their Complaint."

4 (*Id.*) Similarly, CXO objected to Requests for Production 3, and 6, and  
5 Interrogatory 3, on the ground that they:

6 Call[] for confidential and commercially-sensitive information.  
7 Should the parties enter into an agreement regarding treatment of  
8 confidential information, Defendant will supplement with  
9 appropriately-designated information consistent with its objection –  
10 specifically, it would provide the amount of sales of ad  
"impressions" in connection with the specific article...

11 (*Id.*)

12 On December 15, 2017, Plaintiffs sent a letter requesting a meet and confer  
13 teleconference regarding CXO's deficient discovery responses. (*Id.* ¶5, Ex. B.)  
14 CXO did not respond. (*Id.* ¶5.) On December 28, 2017, Counsel for Plaintiffs  
15 followed up on the December 15 meet and confer letter. (*Id.* ¶7, Ex. C.) This  
16 teleconference took place on January 2. (*Id.* ¶8.) During the teleconference,  
17 Counsel for CXO indicated that it would not produce documents in the absence of  
18 a protective order. (*Id.*) On January 5, 2018, CXO and IDG moved for a protective  
19 order related to documents requested by Plaintiffs. (ECF. No. 69.)

20 During the pendency of CXO's Motion for Protective Order, on January 31,  
21 the deadline for jurisdictional discovery, Defendant Kromtech produced 3,985  
22 pages in response to Plaintiffs' discovery requests. (Neta Decl. at ¶10.) CXO  
23 produced no supplemental documents or responses. (*Id.*) On February 6, 2018, the  
24 Court granted IDG and CXO's motion and entered the protective order. (*ECF Nos.*  
25 *76-77.*) On Tuesday, February 6, 2018, at approximately 2:00 PM PST, CXO  
26 produced documents in response to Plaintiffs' requests for production. (Neta Decl.  
27 ¶11, Ex. F.) And on February 7, 2018, at 10:36 a.m. PST, CXO served responses to  
28

1 Plaintiffs' Interrogatories number 3 and 5. (*Id.* ¶12, Ex. G.) CXO's responses were  
2 deficient, failing to provide any information regarding the relationship between  
3 CXO and IDG, and providing only information regarding one specific article – the  
4 Ragan article – published on its website.

5 During the afternoon of February 7, counsel for Plaintiffs informed counsel  
6 for CXO of this and requested an extension of the Motion to Amend pleadings  
7 deadlines. Counsel for CXO and IDG refused. (*Id.* ¶13; Ex. H.) That night,  
8 Counsel for Plaintiffs sent a letter to Counsel for CXO and IDG, detailing CXO  
9 and IDG's discovery deficiencies and requesting a meet and confer teleconference.  
10 (*Id.* ¶14; Ex. I.) Counsel participated in that teleconference during the morning of  
11 February 8. (*Id.* ¶15.) Plaintiffs then filed a Motion to Extend the Deadline to File  
12 their Motion to Amend Complaint, Dkt. 81, and a Motion to Expedite the same.  
13 (ECF No. 79.) Plaintiffs now move to compel CXO to provide complete responses  
14 to discovery.

## 15 ARGUMENT

16 Federal Rule of Civil Procedure 26(b)(1) provides that "Parties may obtain  
17 discovery regarding any nonprivileged matter that is relevant to any party's claim  
18 or defense - including the existence, description, nature, custody, condition, and  
19 location of any documents or other tangible things and the identity and location of  
20 persons who know of any discoverable matter." While this Court's August 28  
21 Order (ECF No. 60) limited the current phase of discovery to jurisdiction only, the  
22 Court did **not** limit discovery to only one article published by CXO and a bare-  
23 bones organizational chart.

24 CXO's primary objection is that the Requests seek information that CXO  
25 characterizes as related to general jurisdiction even though the Court stated that the  
26 initial complaint only relies on specific jurisdiction. Neta Decl. Ex. A. But there  
27 are problems with that argument.  
28

1 First, the Court's statement pertains only to the *initial* complaint. Nothing in  
2 the Court's Order limits the mandated discovery to specific jurisdiction - after  
3 which the Court gave leave for Plaintiffs to amend. The Court expressly allowed  
4 Plaintiffs to seek discovery about jurisdiction to support a **First Amended**  
5 **Complaint**, whether that is general or specific. Plaintiffs have never waived their  
6 right to assert general jurisdiction in the First Amended Complaint.

7 Even if Plaintiffs had waived their right to take discovery regarding specific  
8 jurisdiction - which they did not - their Requests in fact seek discovery relevant to  
9 that issue. Unlike general jurisdiction, which exists where a defendant is  
10 incorporated or has its principal place of business, specific jurisdiction relates to  
11 activities that demonstrate a defendant has purposely availed itself of the privilege  
12 of conducting business in the state. *See Daimler Ag v. Bauman*, 134 S. Ct. 746,  
13 755, 762 (2014).

14 Because CXO's business targets Washington consumers, they are subject to  
15 specific jurisdiction related to those activities. The articles about River City arose  
16 out of the purposeful targeting of Washington residents for readers and business.  
17 The Ragan Article is **not** the only relevant article for purposes of a specific  
18 jurisdiction analysis. River City has the right to discovery related to CXO's page  
19 views for **all** of its articles and website, and revenue in Washington

20 The Court's August 28 Order supports this position. It says **nothing** about  
21 limiting discovery to the Ragan Article. Instead, the Court explained:

22 It is established if the plaintiff can show that (1) the non-resident  
23 defendant purposefully directed his activities or consummated some  
24 transaction with the forum or resident thereof; or performed some act  
25 by which it purposefully availed itself of the privilege of conducting  
26 activities in the forum, thereby invoking the benefits and protections  
27 of the forum's laws; (2) the claim arises out of or relates to the  
28 defendant's forum related activities; and (3) the exercise of  
jurisdiction comports with fair play and substantial justice, i.e., it  
must be reasonable. *Picot v. Weston*, 780 F.3d 1206, 1211 (9th Cir.  
2015).

1 River City's discovery requests seek information on CXO's activities directed at  
2 residents in the state of Washington. Providing page views and revenue from one  
3 article - even the article at issue - is not sufficient.

4 When it met conferred over its deficient discovery responses, counsel for  
5 CXO cited only one case in support of its position: *Bristol-Myers Squibb Co. v.*  
6 *Superior Court of Cali., San Francisco Cty.*, 137 S. Ct. 1773 (2017). But *Bristol-*  
7 *Meyers* does not apply to controversies brought by in-state residents regarding  
8 activities in the forum state. In *Bristol-Meyers*, the Court held that due process did  
9 not permit exercise of specific personal jurisdiction in California over ***nonresident***  
10 ***consumers' claims***. *Id.* at 1783-84. Because the suit did not arise out of or relate to  
11 the defendant's contact with the forum, the court could not exercise specific  
12 personal jurisdiction over the defendant. *Id.* at 1780.

13 *Bristol-Meyers* does ***not*** instruct that no contacts other than the specific case-  
14 related contact are relevant for specific jurisdiction. And no case has applied  
15 *Bristol-Meyers* in that way. Instead, courts considering specific jurisdiction over a  
16 defendant for actions occurring in the forum provide that *Bristol-Meyers* does not  
17 apply. *See Lindsley v. American Honda Motor Company*, 2017 WL 3217140, at \*2  
18 (E.D.P.A. July 7, 2017); *Kowal v. Westchester Wheels, Inc.*, 2017 Il. App. (1st)  
19 152293 (Ill. App. September 8, 2017); *Thomas v. Ford Motor Company*, 2017 WL  
20 4541397, at \*2 (October 10, 2017).

21 Specific personal jurisdiction is proper if the "defendant's suit-related  
22 conduct ... create[s] a substantial connection with the forum State." *Walden*, 134  
23 S.Ct. at 1121. It is appropriate where (1) the defendant purposefully directed its  
24 activities at the forum State or purposefully availed itself of the privilege of  
25 conducting business in that State and (2) the defendant's forum-related activities  
26 caused the plaintiff's injury. *Tamburo v. Dworkin*, 601 F.3d 693, 702 (7th Cir.  
27 2010) (citing *Burger King*, 471 U.S. at 472). The purposeful availment inquiry is  
28 about whether the party should reasonably anticipate being haled into court in the

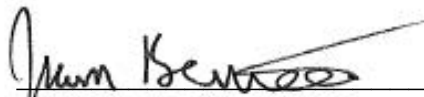
1 forum state. *See Genetic Veterinary Sciences*, 2014 WL 2894301, at \*4; *Trade*  
2 *Well Int'l v. United Cent. Bank*, 825 F.3d 854, 859 (7th Cir. 2016). CXO  
3 purposefully availed itself of the state of Washington by its activities targeting  
4 articles to Washington State residents. Plaintiffs have the right to discovery to  
5 verify this fact in support of their First Amended Complaint.

### 6 CONCLUSION

7 CXO has no valid reason for withholding the information and documents  
8 Plaintiffs seek. Plaintiffs are not limited to discovery regarding specific jurisdiction,  
9 but even if they were, the discovery sought *is* relevant to specific jurisdiction. The  
10 question of jurisdiction involves CXO's efforts to target Washington consumers in  
11 any way, not just the Washington-specific page views of the article at issue. Yet  
12 because of CXO's refusal to cooperate, Plaintiffs' can't fully evaluate jurisdiction  
13 for purposes of their First Amended Complaint. CXO engineered this problem by  
14 withholding documents and information until after the jurisdiction discovery  
15 deadline passed, and then providing woefully inadequate responses. Plaintiffs are  
16 entitled to discovery relevant to this Court's jurisdiction, and respectfully request  
17 that the Court orders CXO to meet its obligations.

18  
19 Dated: February 9, 2018

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## CERTIFICATE OF SERVICE

I hereby certify that on February 9, 2018, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following:

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I declare under penalty of perjury that the foregoing is true and correct.

  
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